IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 1693 of 2003

WITH

CIVIL APPLICATION NO.6317 OF 2003

For Approval and Signature:

HON'BLE MR.JUSTICE M.H.KADRI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

ORIENTAL INSURANCE CO LTD.

Versus

DEEPKABHAI MOHANLAL SHAH

Appearance:

1. First Appeal No. 1693 of 2003

MR MAULIK J SHELAT for Petitioner No. 1

Respondent No.1 party-in-person

..... for Respondent No. 2-3

CORAM : HON'BLE MR.JUSTICE M.H.KADRI

Date of decision: 09/09/2003

ORAL JUDGEMENT

Appeal admitted. The party-in-person Mr. Deepakbhai Mohanlal Shah, respondent No.1 waives service

of notice of admission. The presence of respondents Nos. 2 and 3 is not required for the purpose of the decision of this appeal. Hence, no notices are served on them as they are not likely to be affected by the decision of this appeal. At the joint request of the learned advocate for the appellant and the respondent No.1-party-in-person, the appeal is taken up for hearing today. For the just decision of the appeal, this Court had called for record and proceeding of Motor Accident Claim Petition No.97 of 1994.

2. The appellant-Oriental Insurance Co. Ltd. by filing this appeal under Section 173 of the Motor Vehicles Act, 1988 (to be referred to as "the Act" for short) has challenged the judgment and award dated September 27, 2001, passed by the Motor Accident Claim Tribunal No. IV, Ahmedabad, in Motor Accident Claim Petition No.97 of 1994, by which judgment and award the claimant-respondent No.1 was awarded a sum of Rs.1 lac with interest at the rate of 9 % per annum from the date of the petition till the realisation. The vehicular accident had taken place on April 10, 1993 around 8-30 p.m. when the respondent No.1 was travelling on his scooter bearing No.GJ 1L-342 and proceeding in the direction of Dada Saheb's Pagla, behind A.G.Teachers College, Navrangpura, Ahmedabad, at that time, one Maruticar bearing No.GJ 7A-3267 driven by the respondent No.2 and owned by the respondent No.3 came in a rash and negligent manner and had knocked down the respondent No.1. The said Maruticar was insured with the appellant-Insurance Co. The respondent No.1-claimant had sustained injuries on various parts of the body and had taken treatment from various doctors. The respondent No.1 had suffered permanent disability due to injuries caused in the vehicular accident. The respondent No.1 is a practicing lawyer in the Gujarat High Court. The respondent No.1-claimant had filed the above claim petition claiming compensation of Rs.1 lac on different heads to be recovered from the driver, owner and Insurance Company of the Maruticar in question.

3. The claim was contested by the driver & owner and Insurance Company of the Maruticar No. GJ 7A 3267 by filing their written statements at Exh.38 and 39 inter-alia contenting that the accident had not taken place due to rash and negligent driving by the driver of the Maruticar and the compensation claimed by the respondent No.1 was excessive.

4. The Tribunal had framed the issues at Exh.54. On behalf of the respondent No.1-claimant, the claimant

examined himself at Exh.55. The respondent No.1 had examined eye witnesses Dilip Babubhai Parmar at Exh.69, Dr. Dharmishthaben Amidhar Gandhi at Exh.70, Dr. Pravinchandra Manilal Shah at Exh.77 and Bhavanisinh Solanki at Exh.78. The respondent No.1 had produced documentary evidence consisting of certificate of Dr. Pravinchandra M. Shah at Exh.56, receipt issued by Dr. Shah at Exh.57, certificate of Dr. Dharmishthaben Gandhi at Exh.71 and scooter repairing bills at Exh.79, 80, 81 and 82.

5. The tribunal on the appreciation of oral as well as documentary evidence had come to the conclusion that the vehicular accident had taken place due to rash and negligent driving solely on the part of the driver of the Maruticar No.GJ-7A 3267. The Tribunal awarded Rs.12,000/- to the claimant under the head of actual loss of income, Rs.1 lac towards future loss of income due to permanent partial disablement suffered by the claimant due to injuries sustained by him in the vehicular accident. The Tribunal awarded Rs.10,000/- towards medical expenses, Rs.3,000/- for special diet and transportation charges and Rs.1120/- towards the cost of repairing of scooter belonging to the claimant. Thus, the Tribunal had come to the conclusion that the claimant was entitled to compensation of Rs.1,26,120/-, but since the claimant has restricted his claim to Rs.1 lac, the Tribunal has passed the above award awarding compensation of Rs.1 lac in favour of the claimant with interest at the rate of 9 % per annum from the date of filing of the petition till realisation, which has given rise to filing of this appeal by the Insurance Company.

6. Learned counsel for the Insurance Company, Mr. Maulik J. Shelat, has taken me through the entire record and proceeding of the appeal. It is submitted by the learned counsel for the appellant that the Tribunal had erred in awarding compensation under the head of future loss of income even though the claimant had not suffered any loss of income due to the accidental injuries and the permanent partial disablement suffered by the claimant. It is further submitted by the learned counsel for the appellant that the award of the Tribunal on the other heads was also excessive and therefore, the appeal deserves to be allowed.

7. I have also heard the respondent No.1-Mr. D.M.Shah, who has appeared party-in-person.

8. The evidence of the claimant and eye witness Dilip Babubhai Parmar, Exh.69 had proved that the

vehicular accident had taken place due to rash and negligent driving by the driver of the Maruticar No.GJ 7A 3267. The claimant had proved that due to the accidental injuries, he could not attend his profession for nearly two months. Even though it was proved by the claimant that his monthly income was Rs.12,000/-, the Tribunal has awarded Rs.12,000/- under the head of actual loss of income which in my opinion is on a lower side.

9. The claimant through the evidence of Dr.Dharmishthaben Gandhi had proved that due to the accidental injuries he had lost four teeth and his functional disability of jaw was 25 %. During the course of the hearing of the petition before the Tribunal, the claimant had restricted the permanent partial disability to 20 % only. However, there is no clear finding of the Tribunal with regard to the disability taking into consideration it body as a whole, but it becomes evident that the Tribunal had assessed the permanent partial disability suffered by the claimant at 10 % taking into consideration body as a whole. The Tribunal had arrived at a finding that the claimant's yearly income was Rs.1 lac and taking into consideration the age of the claimant at the time of the accident, had adopted a multiplier of 10. On the head of future economic loss, the Tribunal assessed Rs.20,000/- as yearly loss and applying multiplier of 10 had come to the conclusion that the future economic loss which would be suffered by the claimant would be Rs.2 lacs. The Tribunal had assessed the permanent partial disability at 10 % taking into consideration body as a whole and had awarded Rs.1 lacs towards future economic loss. It is true that the claimant had not suffered economic loss due to disability suffered by him in the vehicular accident, but keeping in mind the functional disability suffered by the claimant and his profession as an advocate, the permanent functional disability of the claimant on the vital bodily organ of jaw which is very important in carrying on his profession as an advocate had affected on the bodily integrity and have caused great inconvenience to him and therefore, it would be just and reasonable to award Rs.60,000/- under the head of disability compensation in favour of the claimant. Though there is no future loss of income suffered by the claimant because of the above disability, but due to partial disability of important organ i.e. jaw, compensation under the head of functional disability should be awarded to the claimant taking into consideration his profession. Though the Tribunal had awarded Rs.1 lac on the head of future economic loss, but the relief of awarding compensation can be adjusted or granted so as to award just and

reasonable compensation so long as that compensation does not exceed the compensation claimed in the petition.

10. The award of Rs.15,000/- under the head of pain,shock and suffering cannot be interfered with taking into consideration the length of treatment undergone by the claimant and the pain suffered by him. The compensation awarded by the Tribunal for expenses of medical treatment, special diet, conveyance charges is just and reasonable and does not call for any interference in this appeal.

11. As a result of the foregoing discussion, the claimant-respondent No.1 shall be entitled to compensation as under :

Rs.60,000/- for compensation of disability,
Rs.15,000/- for pain,shock and suffering,
Rs.12,000/- for actual loss of income,
Rs.10,000/- for medical expenses and
Rs. 3,000/- for special diet & transportation charges.

Total Rs.1,00,000/-

12. In view of the above, the respondent No.1-claimant shall be entitled to recover compensation from the appellant-Insurance Company, driver and owner of the Maruticar bearing No.GJ 7A 3267 in the sum of Rs.1 lac with interest at the rate of 9 % per annum from the date of petition till realisation with costs.

13. As a result of the foregoing discussion, the appeal fails and is dismissed with costs.

14. As the appeal is finally disposed of, no orders are passed in Civil Application No.6317 of 2003 for stay.

15. The office is directed to send the record and proceeding to the Tribunal forthwith.

(M.H.Kadri, J.)

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